

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition of Core Communications, Inc. for)
Forbearance under 47 U.S.C. § 160(c) from)
Rate Regulation Pursuant to § 251(g) and for)
Forbearance from the Rate Averaging and)
Integration Regulation Pursuant to § 254(g))

WC Docket No. 06-100

**REPLY COMMENTS
OF
MINNESOTA INDEPENDENT COALITION**

June 26, 2006

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 06-100
Petition of Core Communications, Inc. for)	
Forbearance under 47 U.S.C. § 160(c) from)	
Rate Regulation Pursuant to § 251(g) and for)	
Forbearance from the Rate Averaging and)	
Integration Regulation Pursuant to § 254(g))	

**REPLY COMMENTS OF
MINNESOTA INDEPENDENT COALITION**

The following Reply Comments are submitted by the Minnesota Independent Coalition in regards to the Petition for Forbearance of Core Communications, Inc., as provided in the Commission's Public Notice released May 5, 2006, DA 06-989. Members of the Minnesota Independent Coalition include over eighty rural telephone companies, as defined in Section 153(37),¹ serving rural areas in Minnesota.

Although some parties support Core's request for forbearance of rate averaging and integration under Section 254(g)² while opposing the request to replace access charges under Section 251(g)³ with reciprocal compensation, both requests are flawed by the same fundamental defects. Accordingly, the Commission should deny both the request to replace access charges under Section 251(g) with reciprocal compensation and request to eliminate rate averaging and integration under Section 254(g).

¹ 47 U.S.C. § 153(37).

² 47 U.S.C. § 254(g).

³ 47 U.S.C. § 251(g).

1. The Comments Demonstrate That Core's Request To Replace Access Charges With Reciprocal Compensation Should Be Denied.

As noted by many commenters, Core's request for forbearance in regards to Section 251(g) is unlawful under Section 160⁴, and is particularly untimely and inappropriate in light of the Commission's pending rulemaking regarding comprehensive reform of intercarrier compensation.

Core's request with respect to Section 251(g) does not conform to the requirements of Section 160 because Core is not requesting forbearance from statutory or regulatory obligations that apply to it. As noted by the Independent Telephone and Telecommunications Alliance:

Core is not required to comply with the obligations placed on carriers by Section 251(g) of the Act or the related access charge rules Core does not even allege that it is subject to the specific requirements of these provisions.⁵

Rather, Core is requesting that both federal and state statutory and regulatory provisions that apply to *incumbent local exchange carriers* (under Section 251(g)) be set aside and replaced with obligations arising under a different statutory provision (Section 251(b)(5)). In contrast, Section 160 "makes it clear that petitions for forbearance can be filed by carriers that are subject to a particular rule."⁶ Section 160 is not intended to enable a petitioner to eliminate regulations and statutory provisions that are applicable to *other categories* of carriers that do not include the petitioner.

Core's request is particularly untimely and inappropriate in relation to the Commission's pending intercarrier compensation rulemaking. Core requests a categorical replacement of one

⁴ 47 U.S.C. § 160.

⁵ Comments of Independent Telephone and Telecommunications Alliance at 4.

⁶ *Id.* at 3.

compensation regime by another, without analysis or consideration of the consequences. As noted by the Independent Telephone and Telecommunications Alliance:

Absent institution of some offsetting cost recovery mechanism, end user rates in rural service areas could rise to unaffordable levels, Core makes no attempt to address how the adverse impacts associated with these revenue shortfalls would be avoided under its forbearance proposal.⁷

The inappropriateness of such a request is heightened by contrast to the extensive efforts, careful balancing, and analysis that is being applied in the intercarrier compensation rulemaking.

Core's request would also impose a serious and senseless obstacle to intercarrier compensation reform. Core's request would apply without distinction to all access rates, interstate and intrastate, of all incumbent LECs, irrespective of size, location or consequences. Core's request would predetermine, without regard to consequences, a multitude of legal and policy issues. Such an approach would be certain to maximize the controversy from the implementation of comprehensive intercarrier compensation reform.

2. Core's Request To Eliminate Rate Averaging Under Section 254(g) Has The Same Defects As Its Request Regarding Replacement Of Access Rates.

A few commenters support Core's request to forbear from enforcement of rate integration and averaging requirements under Section 254(g) and related regulations.⁸ However, Core's request should be rejected for the same reasons as Core's request to replace state and interstate access charges with reciprocal compensation.

a. Core's request is outside the scope of Section 160.

Core's request to forbear from enforcement of rate integration and averaging requirements under Section 254(g) and related regulations do not meet the requirements of

⁷ *Id.* at 9

⁸ AT&T Comments at 4; Sprint-Nextel Comments at 5; Verizon Comments at 15.

Section 160 because Core is not requesting forbearance from statutory or regulatory obligations that apply to it. Section 160 provides in part:

Any telecommunications carrier ... may submit a petition to the Commission requesting that the Commission exercise the authority granted in this Section with respect to that carrier ... or any service offered by that carrier

Section 160 provides that forbearance is a remedy that may be invoked by a carrier with respect to *its own* obligations or services, but Section 160 provides no support for use of forbearance to alter the obligations or services provided by *other* carriers. Core may not invoke Section 160 with respect to Section 254(g) and related regulations because Section 254(g) and the related regulations do not apply to Core. Section 254(g) provides in part:

[T]he Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost area shall be no higher than the rates charged by each such provider to its subscribers in urban areas.

The rate averaging requirements of Section 254(g) apply to interexchange carriers that provide interexchange services in both urban and rural areas. Core is not such a carrier and cannot invoke Section 160 with respect to the obligations and services of such carriers.

b. The necessary showing of public interest is missing.

Core's petition also "does not provide any evidence that forbearance from enforcement of the Act's geographic rate averaging and integration requirements would serve the public interest."⁹ The New Jersey Division of the Ratepayer Advocate similarly notes that Core's petition "lacks empirical and evidentiary support and offers mere conclusions in support of the

⁹ Comments of Independent Telephone and Telecommunications Alliance at 10.

petition.”¹⁰ The parties that support Core’s request for forbearance from continued geographic averaging offer nothing to remedy these defects.

Section 254(g) was not based on the expectation that there would be a lack of competition in urban areas. Rather, it was based on the *differences between* urban and rural markets and the recognition that increased competition in urban areas would provide an incentive to charge higher rates in higher cost, less competitive rural areas. The retention of geographic averaging requirements for interexchange rates remains critically important to consumers in rural and high cost areas, and will continue to do so until intercarrier compensation reform is accomplished.

AT&T cites the “national networks in existence in 1995” and “substantial fiber networks that have been installed” by other carriers.¹¹ While those networks have certainly established vigorous competition in urban areas and between points along many of those fiber networks, there is no showing that these fiber networks have had a comparable impact in rural areas. AT&T’s citation of factors that are increasing *urban* competition provide no basis to forbear from enforcement of Section 254(g). To the contrary, such competition supports the need for ongoing enforcement of geographic averaging requirements to protect *rural* consumers.

Sprint Nextel argues that “a unified intercarrier compensation mechanism [based on reciprocal compensation] would reduce IXC’s incentives to price toll services differently ... and thus would moot the need for rate averaging and integration.”¹² Sprint Nextel adds that elimination of geographic rate averaging requirements “is unlikely to result in *dramatically*

¹⁰ Comments of New Jersey Division of the Ratepayer Advocate at 2.

¹¹ AT&T Comments at 5.

¹² Sprint Nextel Comments at 6.

higher rates to consumers in high-cost regions.”¹³ While Sprint Nextel offers no proof of these assertions, acceptance at face value underscores the defects in the request.

There is no assurance that implementation of comprehensive intercarrier compensation reform will lead to a unified compensation rate, which prejudices a key issue. Further, Sprint Nextel’s Comments appear to acknowledge that even that result would not remove IXCs’ incentives to deaverage, asserting only that “dramatically higher” rates are unlikely. In the absence of proof of supporting public interest, the request for forbearance of geographic rate averaging requirements should be rejected.

c. Core’s request is particularly untimely.

Core’s request is also untimely and counterproductive to the goal of comprehensive intercarrier compensation reform. In opposing the Core request for forbearance of Section 251(g), AT&T notes that “the Commission must strive to achieve a global solution that will work for consumers and the industry as a whole, rather than a particular industry segment.”¹⁴ The same is true of Core’s request for forbearance with respect to Section 254(g), which AT&T supports.

Inter-carrier compensation rates and interexchange rates are clearly related, and that relationship was clearly understood when Section 254(g) was enacted. Section 254(g) was intended to preserve averaging of interexchange service rates notwithstanding the incentives to deaverage interexchange rates that result from higher rural access rates. Thus, the presence of higher rural access rates and resulting incentive to deaverage interexchange rates provides no justification for forbearance.

¹³ *Id.* (Emphasis added).

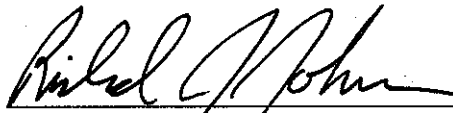
¹⁴ AT&T Comments at 2.

Elimination of geographic averaging protections would substantially change the underlying dynamics and public interest implications of intercarrier compensation. The addition of such a significant new element of uncertainty into the intercarrier compensation reform process would be highly counterproductive, making Core's request particularly untimely.

For all of these reasons, the Commission should reject both Core's requests to replace all state and interstate access rates under Section 251(g) with reciprocal compensation rates and to eliminate rate averaging requirements under Section 254(g).

Respectfully submitted,

MINNESOTA INDEPENDENT COALITION

A handwritten signature in black ink, appearing to read "Richard Johnson", is written over a horizontal line.

Richard J. Johnson,
Moss & Barnett, A Professional Association
Its Attorneys